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Securing Personal Jurisdiction over Nonresidents in Spousal and Child Support Suits: Is California's Long-Arm Too Short?

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SECURING PERSONAL JURISDICTION OVER NONRESIDENTS IN SPOUSAL AND CHILD SUPPORT SUITS: IS CALIFORNIA'S LONG-ARM TOO SHORT?*

This Comment examines California's approach to long-arm jurisdiction in familial support suits. The author suggests that California's courts have failed to consider adequately the full panoply of interests which bear on the constitutionality of exercising jurisdiction over nonresidents for support. Consequently, the reach of California's long-arm statute has been unduly restricted. As a solution, the author proposes a new "familial relationship" basis for jurisdiction in support actions.

INTRODUCTION

Before a state may adjudicate personal rights flowing from a marital relationship, it must have personal jurisdiction over the parties.[1] Thus, a wife may not secure a valid support order for herself or her children unless she finds a court with personal jurisdiction over her husband.[2] Unfortunately, personal jurisdiction may prove difficult to obtain. As a consequence of the marriage breakdown, one or both spouses may have taken up residence far from the marital domicile.[3] The defendant spouse may even have obtained an ex parte divorce in a distant state in a deliberate attempt to avoid any support obligations.[4]

* The author would like to express his grateful appreciation to Professor Darrell Bratton for his valuable assistance in the preparation of this Comment.

1. Vanderbilt v. Vanderbilt, 354 U.S. 416 (1957); Estin v. Estin, 334 U.S. 541 (1948).

2. Of course, California recognizes an obligation of support in both spouses. CAL. CIV. CODE § 5132 (West 1979). As a practical matter, however, suits by husbands for support remain uncommon. *See, e.g., In re* Marriage of Higgason, 10 Cal. 3d 476, 487, 516 P.2d 289, 296, 110 Cal. Rptr. 897, 904 (1973).

3. *See, e.g.*, Knowles, *Expanding Jurisdiction over Domestic Relations Causes*, 11 J. FAM. L. 49, 53 (1971); Comment, *Long-Arm Jurisdiction in Alimony and Custody Cases*, 73 COLUM. L. REV. 289, 290 (1973).

4. A marriage can be dissolved without personal jurisdiction over the responding party as long as the suit is filed at the petitioner's domicile. Williams v.

In response to this problem, many states have enacted specially tailored long-arm statutes authorizing service of process on nonresident defendants in spousal and child support suits.[5] Typically, these statutes only authorize jurisdiction when the defendant's contacts with the state satisfy certain criteria, such as the maintenance of a matrimonial domicile[6] or the conception of a child[7] within the state. In contrast, California has relied since 1970 on a single, all-inclusive long-arm statute containing no specific factual prerequisites to the state's exercise of jurisdiction over nonresidents. Section 410.10 of the Code of Civil Procedure simply provides that California's courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of [California] or of the United States."[8]

Ten years have seen only a handful of challenges to California's broad jurisdictional mandate in the context of familial support litigation.[9] Nonetheless, a disturbing trend is apparent. California's courts have made no effort to carve out an approach to long-arm jurisdiction in domestic relations suits that reflects the special considerations of policy inherent in this area of the law. The courts have relied instead on doctrines derived from cases involving corporate defendants or arm's-length transactions between individuals. References to policy or the special nature of intrafamily lawsuits have been infrequent and superficial.

This Comment will suggest that California's courts revise their approach to long-arm jurisdiction in support actions. After a brief review of basic jurisdictional principles, the Comment explores

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North Carolina, 317 U.S. 287 (1942). Personal obligations survive the ex parte divorce, however, and may be asserted later by the respondent if he or she can somehow acquire personal jurisdiction over the delinquent spouse. Vanderbilt v. Vanderbilt, 354 U.S. 416 (1957); Estin v. Estin, 334 U.S. 541 (1948). California adopted this "divisible divorce" theory in Hudson v. Hudson, 52 Cal. 2d 735, 344 P.2d 295 (1959). *See also* Weber v. Superior Court, 53 Cal. 2d 403, 348 P.2d 572, 2 Cal. Rptr. 9 (1960); Comment, *State Law Problems in Adopting the Divisible Divorce Theory*, 12 STAN. L. REV. 848 (1960).

5. *See, e.g.*, IDAHO CODE § 5-514 (1979); ILL. ANN. STAT. ch. 110, § 17 (Smith-Hurd Supp. 1979); NEV. REV. STAT. § 14.065 (1973); OKLA. STAT. ANN. tit. 12, § 1701.03 (West Supp. 1979); TEX. FAM. CODE ANN. §§ 3.26, 11.051 (Vernon Supp. 1978).

6. *See, e.g.*, IDAHO CODE § 5-514 (1979); ILL. ANN. STAT. ch. 110, § 17 (Smith-Hurd Supp. 1979).

7. *See, e.g.*, TEX. FAM. CODE ANN. § 11.051 (Vernon Supp. 1978).

8. CAL. CIV. PROC. CODE § 410.10 (West 1973).

9. Only six such cases have reached the appellate level since Code of Civil Procedure § 410.10 was adopted in 1970. *See* Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977), *rev'd*, 436 U.S. 84 (1978); *In re* Marriage of Lontos, 89 Cal. App. 3d 61, 152 Cal. Rptr. 271 (1979); Bartlett v. Superior Court, 86 Cal. App. 3d 72, 150 Cal. Rptr. 25 (1978); Hoerler v. Superior Court, 85 Cal. App. 3d 533, 149 Cal. Rptr. 569 (1978); Judd v. Superior Court, 60 Cal. App. 3d 38, 131 Cal. Rptr. 246 (1976); Titus v. Superior Court, 23 Cal. App. 3d 792, 100 Cal. Rptr. 477 (1972).

the unique considerations of policy that inhere in domestic relations litigation. It then analyzes the current California approach. Finally, in an effort to afford desirable consistency and predictability to jurisdictional decision-making in this area of the law, the Comment formulates a new basis for jurisdiction specifically tailored to spousal and child support suits.

JURISDICTION: SATISFYING DUE PROCESS

The permissible scope of state jurisdiction is determined by the due process clause of the fourteenth amendment. The contours of due process, however, are vague. Russell Weintraub has suggested that the core concept is simply "reasonableness."[10] This was the standard adopted by the Supreme Court in *International Shoe Co. v. Washington*.[11] "[The demands of due process] may be met by such contacts . . . with the state of the forum as make it reasonable, in the context of our federal system of government, to require [the defendant] to defend the particular suit which is brought here."[12] *International Shoe* has since been enshrined in the law as the "minimum contacts" test for jurisdiction, the Court having noted that jurisdiction must be based on "certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "[13]

In subsequent cases the Court has attempted to lend more rigorous definition to the due process test. For example, in *McGee v. International Life Insurance Co.*,[14] a suit by the beneficiary of an insurance policy against a nonresident insurer, the Court noted that modern developments in transportation and communication have "made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."[15] In *McGee*, the defendant insurance company's contacts with the forum were minimal; it had no office or agent in the state and, except for the contract sued upon, it had done no business there.[16]

10. R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 71 (1971). *See also* Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L. F. 533, 535 ("fairness").
11. 326 U.S. 310 (1945).
12. *Id.* at 317.
13. *Id.* at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).
14. 355 U.S. 220 (1957).
15. *Id.* at 223.
16. *Id.* at 222.

Nevertheless, the Court upheld jurisdiction over the company, stressing the vulnerability of the plaintiff and the forum state's interest "in providing effective means of redress for its residents when their insurers refuse to pay claims."[17]

A year later, in *Hanson v. Denckla*,[18] the Court emphasized a "give and take" approach to long-arm jurisdiction. *Hanson* involved a suit by the executrix of an estate against a foreign trust company. The defendant, a Delaware corporation, had entered into a trust agreement with the plaintiff's testatrix, who was then a resident of Pennsylvania.[19] The settlor subsequently moved to Florida. The only contacts the defendant had with Florida thereafter consisted of letters and payments to the settlor. The trustee did not transact any business in the state.[20] In rejecting Florida's claim of jurisdiction over the trustee in a suit based on the trust, the Court stated:

> The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.[21]

Although this "purposeful availment" test arose in the context of a business transaction involving a corporate defendant, it has been widely applied to cases involving individuals and non-commercial dealings.[22]

Language in another Supreme Court case, *Shaffer v. Heitner*,[23] has been viewed by commentators as providing a further refinement to the *International Shoe* standard.[24] In holding that the

17. *Id.* at 223. *McGee* established what has been called the "high-water mark" for due process limitations on long-arm jurisdiction. R. WEINTRAUB, *supra* note 10, at 88. Language in subsequent Supreme Court opinions has been more restrictive. Indeed, in all of the personal jurisdiction cases which have reached the Supreme Court since 1958, jurisdiction has been found lacking, prompting one commentator to suggest that the Court has established as a priority the "imposition of effective limits on state court exercises of jurisdiction." Nordenberg, *State Courts, Personal Jurisdiction and the Evolutionary Process*, 54 NOTRE DAME LAW. 587, 588 (1979).

18. 357 U.S. 235 (1958).

19. *Id.* at 238.

20. *Id.* at 251-52.

21. *Id.* at 253.

22. California courts, in particular, have liberally applied the *Hanson* standard. *See, e.g.*, Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977), *rev'd*, 436 U.S. 84 (1978) (child support suit); Sibley v. Superior Court, 16 Cal. 3d 442, 546 P.2d 322, 128 Cal. Rptr. 34 (1976) (individual defendant); Cornelison v. Chaney, 16 Cal. 3d 143, 545 P.2d 264, 127 Cal. Rptr. 352 (1976) (individual defendant); Hoerler v. Superior Court, 85 Cal. App. 3d 533, 149 Cal. Rptr. 569 (1978) (support suit). *See also* text accompanying notes 140-44 *infra*.

23. 433 U.S. 186 (1977).

24. *See, e.g.*, Fischer, *State Interests, Minimum Contacts, and In Personam Jurisdiction Under Code of Civil Procedure Section 410.10*, 12 U.S.F. L. REV. 387

nonresident directors and officers of a Delaware corporation did not, solely by virtue of their stock ownership, have sufficient contacts with Delaware to warrant its exercise of jurisdiction over them, the Court stressed the importance of a defendant's ability to foresee a potential suit in the forum.[25]

Distillation of these Supreme Court opinions yields three broad indicia of reasonableness: the nature and extent of the forum's interest in the litigation,[26] the purposefulness of the defendant's conduct,[27] and the foreseeability of a suit in the forum.[28] Other factors which have been considered by the lower courts include the number of contacts the defendant has with the forum,[29] the

(1978); Woods, *Pennoyer's Demise; Personal Jurisdiction After* Shaffer *and* Kulko *and a Modest Prediction Regarding* World-Wide Volkswagen Corp. v. Woodson, 20 ARIZ. L. REV. 863 (1978).

25. [A]ppellants had no reason to expect to be haled before a Delaware court. Delaware, unlike some States, has not enacted a statute that treats acceptance of a directorship as consent to jurisdiction in the State. And "[i]t strains reason . . . to suggest that anyone buying securities in a corporation formed in Delaware 'impliedly consents' to subject himself to Delaware's . . . jurisdiction on any cause of action."

Shaffer v. Heitner, 433 U.S. 186, 216 (1977) (quoting Folk & Moyer, *Sequestration in Delaware: A Constitutional Analysis*, 73 COLUM. L. REV. 749, 785 (1973)) (footnote omitted).

Shaffer extended the minimum contacts standard of *International Shoe* to quasi in rem actions, thus eliminating attachment of a nonresident's property as a means of local redress when personal jurisdiction would not lie. *See also* Rush v. Savchuk, 100 S. Ct. 571 (1980), where the Court followed *Shaffer* in rejecting an effort by Minnesota to exercise quasi in rem jurisdiction over a nonresident who had no contacts with Minnesota. Minnesota had tried attaching the contractual obligation of the defendant's liability insurer which was licensed to do business in the state. For commentary on the significance of *Shaffer* for long-arm jurisdiction in support suits, see Weintraub, *Texas Long-Arm Jurisdiction in Family Law Cases*, 32 SW. L. J. 965, 970 (1978).

26. McGee v. International Life Ins. Co., 355 U.S. 220 (1957).

27. Hanson v. Denckla, 357 U.S. 235 (1958).

28. Shaffer v. Heitner, 433 U.S. 186 (1977). *See also* World-Wide Volkswagen Corp. v. Woodson, 100 S. Ct. 559 (1980):

> The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness". . . . Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute . . . ; the plaintiff's interest in obtaining convenient and effective relief . . . , at least when that interest is not adequately protected by the plaintiff's power to choose the forum . . . ; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies. . . .

Id. at 564.

29. *See, e.g.*, Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc., 239 F.2d 502 (4th

extent to which the cause of action is connected to the forum,[30] the relative inconvenience of suit in the forum,[31] the availability of an alternative forum,[32] and forum conveniens concepts such as the presence of evidence[33] or the convenience of witnesses.[34]

All of these considerations have quite naturally become a part of California's jurisdictional formula, since the range of California's long-arm statute is commensurate with the limits of due process. It may be worth noting, however, that most of these jurisdictional principles were developed in tort or contract suits. Indeed, the three Supreme Court cases discussed above involved tort or contract actions against corporate defendants[35] or arms-length transactions between individuals.[36] To the extent that jurisdictional reasonableness also depends on the unique characteristics of the area of law involved,[37] rigid adherence in a support suit to doctrines derived from these or other functionally dissimilar cases would be misplaced. A better approach would be to adapt these jurisdictional constructs to reflect the considerations of policy inherent in domestic relations cases. In principle, this would allow the courts to estimate more accurately the reasonableness of exercising jurisdiction over nonresident defendants in

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Cir. 1956) (one contact insufficient). *But see* McGee v. International Life Ins. Co., 355 U.S. 220 (1957) (one contact sufficient).

30. *See, e.g.*, Fisher Governor Co. v. Superior Court, 53 Cal. 2d 222, 347 P.2d 1, 1 Cal. Rptr. 1 (1959) (defendant must have greater connection with the forum if cause of action is not connected with the state).

31. *See, e.g.*, Aetna Cas. & Sur. Co. v. Schmitt, 441 F. Supp. 440 (N.D. Cal. 1977).

32. *See, e.g.*, Empire Abrasive Equip. Corp. v. H.H. Watson, Inc., 567 F.2d 554 (3d Cir. 1977).

33. *See, e.g.*, Aetna Cas. & Sur. Co. v. Schmitt, 441 F. Supp. 440 (N.D. Cal. 1977).

34. *See, e.g.*, Ashe v. Pepsico, Inc., 443 F. Supp. 84 (S.D.N.Y. 1977).

35. Hanson v. Denckla, 357 U.S. 235 (1958); McGee v. International Life Ins. Co., 355 U.S. 220 (1957).

36. Shaffer v. Heitner, 433 U.S. 186 (1977). Actually, with one exception, all of the Supreme Court's significant pronouncements on personal jurisdiction since *International Shoe* have involved corporate defendants or arm's-length transactions between individuals. *See, e.g.*, Rush v. Savchuk, 100 S. Ct. 571 (1980) (tort suit between unrelated individuals); World-Wide Volkswagen Corp. v. Woodson, 100 S. Ct. 559 (1980) (corporate defendant); Shaffer v. Heitner, 433 U.S. 186 (1977) (shareholders' derivative suit against nonresident corporate officers); Hanson v. Denckla, 357 U.S. 235 (1958) (suit by the executrix of an estate against a foreign trust company); McGee v. International Life Ins. Co., 355 U.S. 220 (1957) (corporate defendant); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952) (corporate defendant); Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950) (corporate defendant); International Shoe Co. v. Washington, 326 U.S. 310 (1945) (corporate defendant). The exception, Kulko v. Superior Court, 436 U.S. 84 (1978), dealt with jurisdiction in a child support suit. Because the *Kulko* opinion is of special import for the thesis of this Comment, it will be discussed separately. *See* text accompanying notes 107-21 *infra*.

37. *See, e.g.*, Comment, *Limited Jurisdiction in California: The Long-Arm of the Law Reaches Farther in Tort than in Contract*, 17 SANTA CLARA L. REV. 919 (1977).

support actions. As a practical matter, such an approach would normally lead to expanded assertions of state court jurisdiction, because domestic relations disputes embody policies that make personal jurisdiction over nonresidents desirable, even when the defendant's contacts with the forum do not fall comfortably within the traditional framework for territorial due process.[38]

POLICY CONSIDERATIONS

There are several considerations of policy which suggest that state court jurisdiction might constitutionally extend farther in support actions than in suits in contract or tort. These include the migratory American lifestyle, the special vulnerability of children, the intimacy of the parent-child relationship, and the state's interest in providing a forum for potentially indigent residents.[39] Conversely, there are other factors which indicate that an expansion of jurisdiction in support suits might be unwarranted. For example, all fifty states have adopted provisions for the reciprocal enforcement of support decrees.[40] These provisions facilitate the prosecution of support claims against nonresidents with a minimum of inconvenience to both plaintiff and defendant. Moreover, any significant relaxation of the due process limitation on state court jurisdiction might impair the states' ability to protect their judicial systems from forum shopping.[41] The extent to which any of these considerations is implicated in a given situation will vary. In support suits, however, a careful weighing of the competing factors will generally tip the balance in favor of expanding jurisdiction.

We live in an increasingly mobile society. Tremendous advances have been made in communication and transportation since *International Shoe* was decided in 1945.[42] Moreover, as the Supreme Court has often noted, these developments have considerably lessened the burden on the defendant of defending in a

38. *See* text accompanying notes 39-81 *infra*.

39. *See* text accompanying notes 42-60 *infra*.

40. *See* UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (1950 version), Commissioner's Prefatory Note, 9A UNIFORM LAWS ANN. 748 (West 1979).

41. *See* text accompanying notes 61-63 *infra*.

42. *See, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 100 S. Ct. 580, 585-86 n.13 (1980) (Brennan, J., dissenting) (citing statistics). Justice Brennan noted that from 1945 to 1976 the number of revenue passenger miles flown (both domestic and international) increased from 450 million to 179 billion, while automobile vehicle-miles driven in the United States increased from 250 billion to 1,409 billion. *Id.*

distant forum.[43] Because the magnitude of the defendant's burden is of "primary concern" in evaluating jurisdictional reasonableness,[44] this trend suggests that jurisdiction might safely be expanded without violating due process. Indeed, one member of the Court has suggested that the Court's emphasis on the extent of the defendant's contacts with the forum may no longer be justified.[45]

Several commentators have voiced concern about the effect of the migratory American lifestyle on the legal obligations flowing from the marital relationship.[46] As a consequence of increased personal mobility and, perhaps, the expansion in career opportunities for women, the dissolution of a marriage now often occasions a departure from the marital domicile by both partners. In the event one spouse thereafter repudiates his or her support obligations, conventional contacts with the state of the obligee's residence may be inconsequential. Personal jurisdiction would therefore seldom lie at the plaintiff's new home, even though the burden of defending there might be no greater than the burden of defending at the abandoned marital domicile, where the defendant's contacts normally would be sufficient to sustain service of process. Under these circumstances the plaintiff would be forced to sue either at the defendant's new residence or at the former marital domicile. Thus, in the context of domestic relations litigation, modern developments in transportation have not only decreased the burden of defending a long distance support suit; they have increased the likelihood that, in the event of litigation, the dependent spouse (the party least able to bear the financial strain) will have to shoulder the cost and inconvenience of suit in a foreign state.[47]

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43. *See, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 100 S. Ct. 559, 565 (1980); Hanson v. Denckla, 357 U.S. 235, 251 (1958); McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957).

44. *See* World-Wide Volkswagen Corp. v. Woodson, 100 S. Ct. 559, 564 (1980).

45. *Id.* at 581 (Brennan, J., dissenting). *See also* Nordenberg, *State Courts, Personal Jurisdiction and the Evolutionary Process*, 54 NOTRE DAME LAW. 587, 614 (1979):

> [S]ince modern transportation and communication have largely blunted defendant's claims of inconvenience, the continued vitality of the minimum contacts test itself is called into question. The defendant's ties to the forum state may no longer be crucial, or even very important, in ascertaining whether or not the fourteenth amendment's test of fairness has been met.

46. *See, e.g.*, Knowles, *Expanding Jurisdiction over Domestic Relations Causes*, 11 J. FAM. L. 49, 53 (1971); Comment, *Long-Arm Jurisdiction in Alimony and Custody Cases*, 73 COLUM. L. REV. 289, 290 (1973).

47. It may be of significance to California courts that the effects of migratory divorces are likely to be enhanced in a "sunbelt" state like California, since thousands of people flock to the warm climate of the west coast every year. California experienced a net immigration of 2,930,000 people between 1960 and 1977,

The potential inconvenience of litigating a support claim in a distant state takes on a special poignancy when children are involved. A child occupies a uniquely vulnerable position in the law. He cannot sue to enforce a support agreement or to increase the parental obligation as inflation or changed circumstances take their toll. He must rely on his guardian to bring suit for him. To the extent that litigation may be inconvenient or costly because jurisdiction over the defendant parent cannot be obtained in the state of the child's residence, the custodial parent's motivation to sue will be decreased. If he or she decides not to bother with the lawsuit, it is the innocent child who suffers.

This immediately distinguishes a child support action from other types of litigation in which the plaintiff has a personal monetary stake. The pro-defendant due process bias is clearly justifiable when the plaintiff stands to gain by the lawsuit. It seems less so when the nominal plaintiff has no personal stake in the outcome and the party whose interests are actually being litigated is helpless or incompetent.[48] Indeed, treating a child support suit like a conventional suit for a money judgment may be theoretically unsound because it implies that the child *will* be adequately cared for and the suit is only a contest to see *who* must pay. Although most states recognize an obligation of support in both parents,[49] in reality the complaining spouse is often indigent, or nearly so. Thus, once a jurisdictional question is raised, the suit becomes a contest to see whether *anyone* will pay.

Viewed in this light, a different approach seems warranted. When the plaintiff sues on behalf of another who is unable to as-

bringing the population of the nation's most populous state to nearly 22,000,000. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 15-16 (1978). *See also* Abel, Barry, Halstead & Marsh, *Rights of a Surviving Spouse in Property Acquired by a Decedent While Domiciled Outside California*, 47 CAL. L. REV. 211, 211 (1959).

48. If the suit is meritorious, the plaintiff will find it worthwhile to initiate litigation away from home. Conversely, if the suit lacks substance, the plaintiff will be unlikely to pursue it when to do so would involve the cost and inconvenience of travelling to a distant forum. Vexatious litigation is discouraged if any inconvenience of the forum falls on the one who brings the suit. Thus, the pro-defendant due process bias serves as a safeguard against lawsuits brought merely to harass, but does not unduly interfere with the prosecution of legitimate claims, at least when the plaintiff is motivated to pursue his or her claim by the prospect of personal gain. Absent such motivation, the pro-defendant bias may work an injustice by discouraging the bringing of *legitimate* but *inconvenient* claims.

49. *See* Freed & Foster, *Divorce in the Fifty States: An Overview as of 1978*, 13 FAM. L. Q. 105 (1979).

sert his interests, determination of the reasonableness of exercising jurisdiction for purposes of due process might better be made by balancing the interests and circumstances of the real opposing parties. In a child support suit this involves contrasting the limited mobility and resources of the child with those of the delinquent parent, and suggests that the scale might properly be tipped toward the former.[50]

There exists another important difference between child support suits and other types of litigation. Child support actions involve an intimate, ongoing relationship between parent and child which is absent in tort or contract actions between unrelated individuals. The distinction is not trivial. It may well be unreasonable to exercise jurisdiction over a nonresident based only on an obligation owed by him to an unrelated domiciliary. As the Court stated in *Hanson v. Denckla*:[51] "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State."[52] On the other hand, when the nonresident maintains a special interest in the welfare of that domiciliary plaintiff, his or her relationship to the forum takes on greater significance. Accordingly, the special import of the parent-child bond may be relevant to a determination of the constitutionality of exercising jurisdiction over an absent parent in an action for the child's support. Indeed, the Supreme Court of the United States has recognized that the parent-child relation may have constitutional dimensions. In *Bellotti v. Baird*,[53] the Court stated: "The unique role in our society of the family . . . requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children."[54] The presence of the child in the forum state should be one factor bearing on the reasonableness of exercising jurisdiction over the parent for support.

A profitable comparison can be made with the jurisdictional requirement in child custody cases. Personal jurisdiction over the

50. It might be argued that the true contrast should be between the resources and mobility of the two parents, not the child and one parent, since it is the custodial parent, not the dependent child, who actually brings the suit. This ignores the motivation argument. *See* note 48 *supra*.

51. 357 U.S. 235 (1958).

52. *Id.* at 253.

53. 99 S. Ct. 3035 (1979).

54. *Id.* at 3043. Significantly, the Supreme Court has also noted that the relationship between the plaintiff and defendant is relevant to a determination of the propriety of exercising jurisdiction over the latter. In Rush v. Savchuk, 100 S. Ct. 571, 579 (1980), the Court stated: "Naturally, the parties' relationships with each other may be significant in evaluating their ties to the forum." This principle would seem to be most strongly implicated in child support suits because the intimate parent-child relation is involved.

defendant spouse is not required before a court may make a valid custody order, even though custody of one's child has been labeled as "far more precious . . . than property rights . . . ."[55] Generally, jurisdiction to determine custody will exist if the forum is either the domicile or residence of the child.[56] The doctrine derives from longstanding judicial concern for the welfare of children. As Judge Cardozo once observed, "the jurisdiction of a state to regulate the custody of infants found within its territory . . . has its origin in the protection that is due to the incompetent or helpless."[57]

If the welfare of the child is sufficient to outweigh, for jurisdictional purposes, the powerful interest of the absent parent in obtaining custody, it is difficult to see why a similar consideration should not operate to expand jurisdiction in child support litigation. The monetary interest at stake in a support suit is normally no greater than the parental desire for custody. In addition, merely expanding jurisdiction (while retaining the limit of fundamental fairness) does considerably less violence to the parent's interest than dispensing with the requirement of personal jurisdiction altogether, as has been done with custody litigation.

But there are considerations beyond the respective interests of the litigants which may be relevant to a determination of the propriety of exercising jurisdiction. The forum state, for example, may have an interest in the suit.[58] Indeed, one eminent jurist has

55. May v. Anderson, 345 U.S. 528, 533 (1953). Personal jurisdiction over both spouses is required, however, for a custody decree to be entitled to full faith and credit. *Id.*

56. *See* R. WEINTRAUB, *supra* note 10, at 194-95. *See also* Sampsell v. Superior Court, 32 Cal. 2d 763, 197 P.2d 739 (1948).

57. Finlay v. Finlay, 240 N.Y. 429, 431, 148 N.E. 624, 625 (1925). California courts have taken a similar stance. *See, e.g., In re* Walker, 228 Cal. App. 2d 217, 223, 39 Cal. Rptr. 243, 247 (1964): "The *leitmotif* of all of the cases dealing with child custody is that the primary, paramount and controlling consideration is the welfare of the child."

58. The Supreme Court has recognized that the forum state's interests are relevant to a determination of the reasonableness of exercising jurisdiction on the basis of the contacts between the defendant and the forum. *See* World-Wide Volkswagen Corp. v. Woodson, 100 S. Ct. 559, 564 (1980); Kulko v. Superior Court, 436 U.S. 84, 92 (1978); McGee v. International Life Ins. Co., 355 U.S. 220, 222-24 (1957); Travelers Health Ass'n v. Virginia, 339 U.S. 643, 648-49 (1950). Moreover, several state courts have emphasized the forum's interest in upholding jurisdiction in child support actions. *See, e.g.*, Neil v. Ridner, 153 Ind. App. 149, 286 N.E.2d 427 (1972); Poindexter v. Willis, 23 Ohio Misc. 199, 51 Ohio Op. 2d 157, 256 N.E.2d 254 (1970); Van Wagenberg v. Van Wagenberg, 241 Md. 154, 215 A.2d 812, *cert. denied*, 385 U.S. 833 (1966).

argued that the support of children is a matter in which the states have a particularly strong interest.

> The maintenance and support of children domiciled within a state, like their education and custody, is a subject in which government itself is deemed to have a peculiar interest and concern. Their tender years, their inability to provide for themselves, the importance to the state that its future citizens should be clothed, nourished and suitably educated, are considerations which lead all civilized countries to assume some control over the maintenance of minors.[59]

This state interest is both economic and sociological. The presence of unsupported children in the state imposes an economic burden on the state's treasury through the welfare rolls.[60] And the presence of economically disadvantaged persons in a state has an eventual adverse effect culturally. Thus, the state has a legitimate interest in providing a forum for its residents in support litigation.

Regionally, however, another factor may be operative. Significant recent decisions[61] and some headline-catching divorce suits[62] have drawn attention to California divorce courts and generated a concomitant concern on the part of the judiciary that California not become a favored forum for the litigation of personal claims arising from foreign marital relationships.[63] This interest of the

59. Yarborough v. Yarborough, 290 U.S. 202, 220 (1933) (Stone, J., dissenting). Justice Stone noted that the state's interest is particularly strong in the children of divorced couples because they are usually young (less than 10 years of age) when divorce occurs. *Id.* n.12.

60. *See In re* Marriage of Lontos, 89 Cal. App. 3d 61, 72, 152 Cal. Rptr. 271, 278 (1979); Nelson, *Family Support from Fugitive Fathers: A Proposed Amendment to Michigan's Long-Arm Statute*, 3 PROSPECTUS 399 (1970).

61. *See, e.g.*, Marvin v. Marvin, 18 Cal. 3d 660, 557 P.2d 106, 134 Cal. Rptr. 815 (1977).

62. *See, e.g.*, Jagger v. Superior Court, 96 Cal. App. 3d 579, 158 Cal. Rptr. 163 (1979) (internationally famous rock musician sued for divorce in Los Angeles). For another rather spectacular divorce suit, see Smilgis, *Marvin Mitchelson Has Progressed From 'Palimony' to 'Petromony', Soraya Kashoggi is Suing for $2 Billion*, PEOPLE, August 27, 1979, at 34 (nonresident billionaire oil sheik sued for alimony in California; jurisdiction premised on enormous financial interests in the state).

63. In the colorful language of one appellate court:

> Although as a general proposition the State of California may wish to persuade out-of-state business to move to California, the resolution of extramarital shipwrecks which have foundered on the rocks of a foreign shore, does not constitute a desirable form of such business. If a newly arrived claimant in California could initiate an action against a nonresident . . . , then California's courts would be thrown wide open to the grossest form of forum shopping, for which the only equipment needed would be a tenuous claim to some California connection, a serviceable carpetbag, and a one-way ticket from New York, London, Paris or Cannes.

Henderson v. Henderson, 77 Cal. App. 3d 583, 593-94, 142 Cal. Rptr. 478, 484 (1978). The *Henderson* case involved an effort by a newly arrived California resident to assert a support obligation against a Florida domiciliary arising from an intimate nonmarital relationship in that state. The court rejected the plaintiff's efforts to premise jurisdiction on business contacts the defendant had with California.

state in protecting the integrity of its judicial system from forum shopping suggests caution in expanding jurisdiction in domestic relations cases.

In addition, it may be suggested that a state's interest in the maintenance and support of its residents is adequately served by the provisions of the Uniform Reciprocal Enforcement of Support Act.[64] The Act, or a "substantially similar" law, has been passed by all fifty states, the organized territories and the District of Columbia.[65] It provides some relief for persons unable to litigate a support claim in a distant forum by allowing the plaintiff to file a petition for support in his or her home state and have the merits adjudicated in the state of the obligor's residence.[66] The issue was recently considered by the United States Supreme Court in *Kulko v. Superior Court*,[67] a support suit brought by a California domiciliary against her ex-husband in New York. The Court noted that California was a signatory to the Act and reasoned that the Act thus facilitated protection of both California's interest in the welfare of its residents and the plaintiff's interest in prosecuting the suit without requiring personal jurisdiction over the nonresident defendant.[68]

Actually, the utility of the Uniform Act is open to question. Problems which have been cited as reducing its effectiveness include lackluster enforcement,[69] lack of true reciprocity between member states,[70] lack of sympathy to the plaintiff's claims in the foreign court,[71] and the low priority given to cases under the Act by county prosecutors due to the more pressing demands of criminal matters and other local business.[72] Moreover, the Act does not address the problems of locating and serving the supporting

64. 9A UNIFORM LAWS ANN. 647 (West 1979).

65. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (1950 version), Commissioner's Prefatory Note, 9A UNIFORM LAWS ANN. 748 (West 1979).

66. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT §§ 11, 14, 18 (1968 version).

67. 436 U.S. 84 (1978).

68. *Id.* at 98-101. The *Kulko* case is discussed more fully in the text accompanying notes 107-21 *infra*. *See also* Leverett v. Superior Court, 222 Cal. App. 2d 126, 34 Cal. Rptr. 784 (1963).

69. Nelson, *Family Support from Fugitive Fathers: A Proposed Amendment to Michigan's Long-Arm Statute*, 3 PROSPECTUS 399, 405-06 (1970).

70. *Id.* at 406-07.

71. Comment, *Long-Arm Jurisdiction in Alimony and Custody Cases*, 73 COLUM. L. REV. 289, 306 (1973).

72. Nelson, *Family Support from Fugitive Fathers: A Proposed Amendment to Michigan's Long-Arm Statute*, 3 PROSPECTUS 399, 406 (1970).

spouse. The plaintiff must still know where the defendant can be found and served with process.[73] Finally, unless both involved states are signatories to the Uniform Civil Liability for Support Act, a companion statute,[74] the applicable law is that of the defendant's residence.[75] The delinquent spouse may have chosen a residence with favorable alimony or child support laws, thus severely limiting the Act's effectiveness.[76] This aspect alone makes the Act an unattractive alternative to personal jurisdiction. Cumulatively, the above factors may preclude meaningful redress through the Act altogether. Accordingly, California's participation in the multi-state statutory scheme should not prevent its courts from expanding jurisdiction over domestic relations suits to the limits of due process.

The foregoing considerations of policy suggest that a broadened area of state court jurisdiction is desirable in domestic relations cases—at least when the support or maintenance of children is at issue. In alimony cases the arguments for expanding jurisdiction are not quite as compelling. The intimate bond between the parties which adds import to the defendant's contacts with the state in child support suits is absent in suits for spousal support because the relationship between the spouses has ruptured. Moreover, unlike a child, the plaintiff spouse is not helpless. And the ultimate monetary burden imposed on the defendant by an alimony decree might be greater than that imposed by a decree for child support. Alimony payments can continue indefinitely, but child support ceases when the child reaches majority.[77]

Still, several commentators have focused on the need for expanded jurisdiction in spousal support actions, noting that the dependent spouse may lack the resources necessary to pursue the delinquent to a distant state.[78] This problem has become more

73. *Id.* at 405.

74. This Act facilitates the use of the Uniform Reciprocal Enforcement of Support Act by imposing identical obligations of support on the signatory states. UNIFORM CIVIL LIABILITY FOR SUPPORT ACT § 13 (1954 version). Its utility is limited, however, because only four states (California, Maine, New Hampshire, and Utah) have adopted it. 9 UNIFORM LAWS ANN. 171 (West 1979).

75. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 4 (1968 version).

76. For an illuminating presentation of the many variations in familial obligations among the states, see Freed & Foster, *Divorce in the Fifty States: An Overview as of 1978*, 13 FAM. L. Q. 105 (1979).

77. *See* Comment, *Extending "Minimum Contacts" to Alimony:* Mizner v. Mizner, 20 HAST. L. J. 361, 377 (1968).

78. *See* Comment, *Divorce Jurisdiction After the 1977 Amendment to the Illinois Long-Arm Statute: Extending a Legal Doctrine or Creating a Legal Hallucination?* 9 LOY. CHI. L. J. 893, 896 (1978). *See also* Nelson, *Family Support from Fugitive Fathers: A Proposed Amendment to Michigan's Long-Arm Statute*, 3 PROSPECTUS 399, 404 (1970). Mr. Nelson notes that "mothers receiving aid to dependent children are concentrated heavily in those occupational groups in which

acute for indigent plaintiffs now that *Shaffer v. Heitner*[79] has eliminated attachment of the defendant's property as a source of local redress.[80] And the alternative of filing suit in the defendant's domicile may be more than costly and inconvenient. It may be tactically unsound. In one recent case, a woman was held to have submitted herself to the "continuing jurisdiction" of the courts of her former husband's domicile by bringing suit there for support. The ex-husband simply waited for a few months after the decree and then sued to reduce the support payments on the ground of changed circumstances, thus forcing her to return and relitigate the issue in an inconvenient court.[81] It would seem, therefore, that although public policy seems more strongly to favor expanded assertions of jurisdiction in suits for child support than in suits for alimony, there are valid reasons for taking a liberal approach to jurisdiction in both types of litigation.

In summary, there are a number of policy considerations which are relevant to a determination of the constitutionality of exercising jurisdiction over nonresident defendants in support suits. The migratory American lifestyle suggests that facilitation of long-arm jurisdiction should be a priority in domestic relations litigation. Advances in transportation and communication have lessened the burden of defense for a nonresident defendant. The special vulnerability of children, the intimate parent-child relationship, and the state's interest in providing a means of redress for its residents all suggest that jurisdiction in familial support suits should be expanded. Conversely, the state's interest in protecting the integrity of its judicial system from forum shopping and the potential for relief through the Uniform Reciprocal Enforcement of Support Act suggest that such an expansion of jurisdiction may be unnecessary and perhaps undesirable.

Generally, however, the Uniform Act will be of only limited value. Thus, where no forum shopping is apparent, consideration of the policies enumerated above should normally lead to ex-

requirements for training and education are at a minimum, remuneration is low, turnover is high, and there is little economic security." *Id.* n.24.

79. 433 U.S. 186 (1977).

80. *See* note 25 *supra*. *See also* Weintraub, *Texas Long-Arm Jurisdiction in Family Law Cases*, 32 Sw. L. J. 965, 970 (1978): "Without the availability of quasi in rem jurisdiction to seize the property of a nonresident spouse, the importance of obtaining personal jurisdiction over that spouse for enforceable money awards incident to family law litigation is increased."

81. Leverett v. Superior Court, 222 Cal. App. 2d 126, 34 Cal. Rptr. 784 (1963).

panded jurisdiction in child support suits, and occasionally in suits for spousal support. A policy-centered approach might even have an additional salutary effect. Focusing on the relevant policies should make clearer the true basis for decision in each case, thus lending desirable consistency and predictability to an area of the law long characterized by ad hoc decision-making.

THE CALIFORNIA APPROACH

Three features dominate the approach of California courts to jurisdictional questions in spousal and child support suits: reliance on bases for jurisdiction developed for other types of cases, rigid application of the *Hanson* "purposeful availment" standard,[82] and superficial treatment of the relevant policies. These characteristics are reflected in opinions from both the intermediate appellate courts and the California Supreme Court.

The Bases for Jurisdiction

The California Judicial Council has published an explanatory Comment to the state's long-arm statute that provides a convenient starting point for jurisdictional analysis.[83] The Comment notes that section 410.10 of the Code of Civil Procedure was designed to allow California courts to exercise jurisdiction commensurate with the limits of due process, and that the section includes "all the recognized bases of judicial jurisdiction."[84] These "recognized bases" include presence, domicile, residence, citizenship, consent, appearance, doing business in the state, doing an act in the state, causing an effect in the state by an act or omission elsewhere, and ownership, use or possession of a thing in the state.[85] Some of these bases were recognized at common law. Others developed as concomitants to the now-famous proliferation of state long-arm statutes which followed the Supreme Court's expansive opinion in *International Shoe*.[86]

Significantly, the Judicial Council acknowledged that its enumeration of constitutionally sufficient bases was not exhaustive[87] and that in personam jurisdiction in support actions could be based on any relationship to the state which "would make it reasonable for the state to hear and determine such action."[88]

82. *See* text accompanying notes 18-22 *supra*.
83. CAL. CIV. PROC. CODE § 410.10, Comment (West 1973).
84. *Id.*
85. *Id.*
86. *See* R. WEINTRAUB, *supra* note 10, at 93.
87. The Council noted that "other relationships to a state" could serve as bases for jurisdiction. CAL. CIV. PROC. CODE § 410.10, Comment (West 1973).
88. *Id.*

Nonetheless, California's courts have made no effort to develop a basis for jurisdiction tailored to support suits. They have relied instead on the already existing bases listed in the Judicial Council Comment.

Titus v. Superior Court,[89] the first support case to reach an appellate court under section 410.10 of the Code of Civil Procedure, is illustrative. From 1961 to 1970 the Tituses lived in Massachusetts, where all three of their children were born.[90] In 1970, they were divorced, the decree providing that Mr. Titus was to support the children.[91] Custody was shared; Mr. Titus was to have the children during the week, Mrs. Titus on weekends.[92] In 1971, Mrs. Titus moved to California, where she remarried.[93] Subsequently, Mr. Titus prepared a visitation agreement which he sent to California for signature by his ex-wife. The agreement provided that the children were to visit their mother in California over the summer.[94] She was to support them while they were there. The airfare was to be shared by the parents.[95]

In August, 1971, the former Mrs. Titus brought suit in California to establish the Massachusetts divorce as a California judgment, to modify the decree to award custody to her, and to require Mr. Titus to pay child support.[96] She premised jurisdiction on the two voluntary acts of Mr. Titus: sending the children to California and sending the agreement to California for signature.[97]

The court structured its analysis around traditional jurisdictional bases. Sending the children into the state was deemed to "fall within the causing 'effects in the state by an act done elsewhere' base of jurisdiction."[98] Sending the agreement into California for signature was said to come under the "doing of an act in the state" basis.[99] The court then turned to the standard due process considerations of fairness and reasonableness in evaluating the petitioner's contacts under these bases, ultimately deciding

89. 23 Cal. App. 3d 792, 100 Cal. Rptr. 477 (1972).
90. *Id.* at 795, 100 Cal. Rptr. at 480.
91. *Id.*
92. *Id.*
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.* at 801, 100 Cal. Rptr. at 484.
98. *Id.*
99. *Id.* at 803, 100 Cal. Rptr. at 486.

that jurisdiction did not exist.[100]

Both bases surfaced again in *Judd v. Superior Court*,[101] another support action involving a nonresident defendant. The Judds were married in New York in 1950 and resided on the east coast until their divorce in 1964. Mrs. Judd and the children then moved to California.[102] Over the next ten years, Mr. Judd wrote and telephoned his children, sent support payments to his ex-wife, and on three occasions visited the children in California.[103]

In 1975, the former Mrs. Judd sued in California for spousal and child support.[104] The trial court found that it had personal jurisdiction over Mr. Judd because he had done acts elsewhere that caused an effect in California (telephone calls, correspondence and making support payments) and because he had done acts in California (visiting his children there).[105] The appellate court rejected both bases as insufficient under the facts before it, noting that the further constitutional criteria of fairness and reasonableness remained unsatisfied.[106]

More recently, in *Kulko v. Superior Court*,[107] the California Supreme Court used the "causing an effect in the state" basis to secure personal jurisdiction over a New York father whose children resided in California. The Kulkos, New York domiciliaries, were married in California in 1959 during Mr. Kulko's brief stopover en route to Korea for military service.[108] Mrs. Kulko returned immediately to New York, where she was joined by her husband after his tour of duty.[109] Two children were born to the marriage in New York, which remained the situs of the family relationship until the parents separated in 1972. That year, Mrs.

100. "We apprehend that it would be unfair and unreasonable to hold that a nonresident parent has submitted himself to the jurisdiction of another state merely by the act of sending his children to that state temporarily for the purpose of visiting with the other parent." *Id.* at 803, 100 Cal. Rptr. at 485.

101. 60 Cal. App. 3d 38, 131 Cal. Rptr. 246 (1976).

102. *Id.* at 41-42, 131 Cal. Rptr. at 247.

103. *Id.* at 44, 131 Cal. Rptr. at 249.

104. *Id.* at 41, 131 Cal. Rptr. at 247.

105. *Id.* at 44-45, 131 Cal. Rptr. at 249-50.

106. "We find that it would neither be fair to petitioner nor reasonable to hold that this state acquired jurisdiction over him merely because he sent support payments here and communicated with his children and their mother by telephone or mail." *Id.* at 45, 131 Cal. Rptr. at 249.

The *Judd* court also dealt briefly with an effort by the respondent to predicate jurisdiction on the "doing business in the state" basis. Without passing on the constitutional sufficiency of this basis in support actions, the court dismissed respondent's contentions as not grounded in the evidence. *Id.* at 43-44, 131 Cal. Rptr. at 248-49.

107. 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977), *rev'd*, 436 U.S. 84 (1978).

108. 436 U.S. at 86.

109. *Id.* at 87.

Kulko obtained a Haitian divorce and moved to California, where she remarried. The divorce decree provided that Mr. Kulko was to have custody of the children during the school year. Mrs. Kulko was to have custody during vacation periods.[110]

A year later, the daughter requested that she be allowed to live with her mother in California.[111] Acquiescing, Mr. Kulko purchased a one-way plane ticket for her.[112] Subsequently, the son telephoned his mother to request that he be allowed to join his sister.[113] Unknown to Mr. Kulko, his ex-wife sent their son a one-way plane ticket, which the boy used to fly to California.[114] The former Mrs. Kulko then sued in California to increase Mr. Kulko's child support obligation.[115]

The California Supreme Court found that Mr. Kulko had "caused an effect in the state" by sending his daughter to live there with her mother.[116] Moreover, exercising personal jurisdiction over Mr. Kulko was "reasonable" because he had thus purposefully "availed himself of the full benefit and protection of the laws of [California]."[117] The court reasoned that California's "laws, institutions and resources—its police and fire protection, its school system, its hospital services, its recreational facilities, its libraries and museums" all redounded vicariously to the benefit of Mr. Kulko through his children.[118] The California court also found that Mr. Kulko had derived an economic benefit from the presence of his children in the state because he no longer had to support them during the school year.[119]

The United States Supreme Court reversed, finding that Mr. Kulko did not derive any economic benefit from his children's presence in California. "Any diminution in appellant's household costs resulted, not from the child's presence in California, but rather from her absence from appellant's home."[120] Moreover, the enumerated non-pecuniary benefits of life in California accrued to

110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.* at 88.
114. *Id.*
115. *Id.*
116. 19 Cal. 3d at 521-22, 564 P.2d at 356, 138 Cal. Rptr. at 589.
117. *Id.* at 524, 564 P.2d at 358, 138 Cal. Rptr. at 591.
118. *Id.* at 522, 564 P.2d at 356, 138 Cal. Rptr. at 589.
119. *Id.* at 524-25, 564 P.2d at 358, 138 Cal. Rptr. at 591.
120. 436 U.S. at 95.

the child, not the father, who had not "in any event . . . purposefully sought [them] for himself."[121]

California's longstanding reliance on the "doing an act in the state" and "causing an effect in the state" bases in support actions appears misdirected. Neither basis reflects the policies implicated by support suits. Indeed, both were formulated in response to the demands of cases involving tortious conduct or commercial activities affecting local residents.[122] Their utility under those circumstances is clear. Long distance tort or contract actions often stem from acts done in the state or effects caused there by acts done elsewhere.[123] Accordingly, the existence of such contacts indicates that exercising jurisdiction over a nonresident in a tort or contract action may be reasonable. On the other hand, these contacts have little bearing on the reasonableness of exercising jurisdiction over nonresidents in support suits. Support obligations spring from the intimate nature of the familial bond and societal concern for the welfare of dependent persons. Specific acts performed by the defendant or effects caused in the state by his conduct elsewhere are seldom relevant. Consequently, neither the "doing an act in the state" basis nor the "causing an effect in the state" basis will normally have much value as a starting point for jurisdictional analysis in support actions.

Significantly, the disutility of the "causing an effect in the state" basis in support suits was emphasized by the United States Supreme Court in *Kulko*. Adverting to the exposition of the rule in the Restatement (Second) of Conflict of Laws, the Court noted that the test "was intended to reach wrongful activity outside of the State causing injury within the State . . . or commercial activity affecting state residents."[124] The Court found it "apparent" that California's reliance in a support action on Kulko's having caused an effect in the state was "misplaced."[125]

Nonetheless, the "causing an effect in the state" test continues to be applied by California courts in support suits against nonres-

121. *Id.* at 94 n.7.

122. *See* R. WEINTRAUB, *supra* note 10, at 109-13; Reese & Galston, *Doing an Act or Causing Consequences as Bases of Judicial Jurisdiction*, 44 IOWA L. REV. 249 (1959).

123. *See, e.g.*, Hess v. Pawloski, 274 U.S. 352 (1927); Sibley v. Superior Court, 16 Cal. 3d 442, 546 P.2d 322, 128 Cal. Rptr. 34 (1976); Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969); Owens v. Superior Court, 52 Cal. 2d 822, 345 P.2d 921 (1959); National Life of Florida Corp. v. Superior Court, 21 Cal. App. 3d 281, 98 Cal. Rptr. 435 (1971). *See also* Gorfinkel & Levine, *Long-Arm Jurisdiction in California Under New Section 410.10 of the Code of Civil Procedure*, 21 HAST. L. J. 1163 (1970).

124. 436 U.S. at 96.

125. *Id.*

idents. The most recent such case, *In re Marriage of Lontos*,[126] involved a former California domiciliary who had maintained significant economic and personal ties to the state. The Lontoses established their marital domicile in San Diego, California, from 1963 to 1969.[127] That year, Mr. Lontos, a United States Marine, was transferred to Alburquerque, New Mexico. Mrs. Lontos and the children accompanied him.[128] The family occupied rented accomodation on an Alburquerque military base and arranged for their California home to be rented and managed by a realtor in Chula Vista, California. They maintained a joint bank account in Chula Vista, and stored boxes of personal effects at Mrs. Lontos' mother's home in San Diego.[129]

On January 1, 1970, Mr. Lontos deserted his family. No longer eligible for military housing because her husband was gone, Mrs. Lontos and the children returned to the marital home in California. Ultimately, she filed suit in California for spousal and child support.[130]

In an articulate and well-reasoned opinion, the appellate court held that California could properly exercise jurisdiction over Mr. Lontos. The thrust of the opinion was properly directed at the *International Shoe* fairness standard,[131] but, in a later passage, the court felt compelled to assert satisfaction of the "causing an effect in the state" test as additional support for its holding. The court noted that the use of the "causing an effect in the state" basis in support actions had been "placed in judicial limbo"[132] by the Supreme Court in *Kulko*, but argued that Mr. Lontos' abandonment of his dependents in New Mexico was functionally equivalent to "the hypothetical shooting of a bullet across a state line into California,"[133] because Mrs. Lontos' return to the marital

126. 89 Cal. App. 3d 61, 152 Cal. Rptr. 271 (1979).
127. *Id.* at 64, 152 Cal. Rptr. at 272.
128. *Id.*
129. *Id.* at 68, 152 Cal. Rptr. at 275.
130. *Id.* at 64, 152 Cal. Rptr. at 273.
131. *See* text accompanying notes 11-13 *supra*.
132. 89 Cal. App. 3d at 71, 152 Cal. Rptr. at 277.
133. *Id.* The "hypothetical" referred to is from the American Law Institute's published caveat to § 37 of the Restatement (Second) of Conflict of Laws.

> The act may have been done with the intention of causing effects in the state. If so, the state may exercise the same judicial jurisdiction over the actor as it could have exercised if these effects had resulted from an act done within its territory. . . . So one who intentionally shoots a bullet into a state is as subject to the judicial jurisdiction of the state as to causes of

home was foreseeable.

This stretching of jurisdictional facts to fit a basis for jurisdiction not designed to reflect the policies implicated by support actions appears unwise. The *Lontos* court might more profitably have searched for a new basis on which to lay the foundation of its decision, eschewing juridical gymnastics in favor of forthright analysis. Mr. Lontos' abandonment of his family could certainly be deemed a "contact" with California in view of the direct and inevitable consequences—his wife's return to the state and subsequent dependence on the California welfare system.[134] The *significance* of Mr. Lontos' act, however, lay in the fact that it had consequences deriving from an intimate relationship nurtured under the laws of California, not in its superficial resemblance to a tort. It should have been so analyzed. Contorting its visage to mirror the face of the tort-spawned "causing an effect in the state" test added nothing to the analysis and obscured the true basis for decision.[135]

In summary, California courts continue to rely in support actions on jurisdictional bases formulated for other types of cases. Analyses so structured tend to reflect policy considerations that are more nearly relevant to tort or contract actions than to suits for familial support. Accordingly, California should develop a new basis for jurisdiction in support litigation which expresses the special considerations of policy attached to intra-family law suits.

The Hanson *Purposeful Availment Standard.*

Before upholding jurisdiction over a nonresident, a court must always ensure that his or her contacts with the forum are of such a nature and quality that it is fair and reasonable to require a de-

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action arising from the shot as if he had actually fired the bullet in the state.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 37, Caveat, Comment a, at 157.

134. 89 Cal. App. 3d at 71, 152 Cal. Rptr. at 277.

135. Compare the approach taken in *Lontos, Judd,* and *Titus* with that taken in Bartlett v. Superior Court, 86 Cal. App. 3d 72, 150 Cal. Rptr. 25 (1978), where the court read the Supreme Court's disapproval of California's use of the "causing an effect in the state" basis in support actions to mandate total disregard of a contact so classified.

> "Petitioner caused a California resident to become pregnant." This is an apparent effort to invoke the doctrine that jurisdiction attaches to one who causes an effect within the state. The *Kulko* opinion points out that this principle, applied in cases involving torts and commercial activities, is not applicable to personal domestic relations.

86 Cal. App. 3d at 76, 150 Cal. Rptr. at 27. This latter approach appears to be equally undesirable, as it promotes inattention to contacts of potential value in evaluating the reasonableness of exercising jurisdiction. Better would be a functional analysis of each contact the nonresident has with the state without regard to artificial or irrelevant classifications.

fense there.[136] The salient feature of this kind of due process analysis is flexibility. As the Supreme Court noted in *Kulko*:

> Like any standard that requires a determination of "reasonableness," the "minimum contacts" test of *International Shoe* is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present . . . . We recognize that this determination is one in which few answers will be written "in black and white. The greys are dominant and even among them the shades are innumerable. . . ."[137]

Early California support suits involving section 410.10 of the Code of Civil Procedure reflected this philosophy. Thus, the *Titus* court rejected jurisdiction "upon a consideration of fairness to petitioner in accord with contemporary views of fair play and substantial justice and in the best interests of the interstate systems. . . ."[138] This approach was echoed four years later by the appellate court in *Judd*.[139]

More recently, however, California courts have gone beyond this simple fairness test and have applied, somewhat rigidly, the "purposeful availment" test of *Hanson v. Denckla*[140] to jurisdictional issues in support suits. In *Hoerler v. Superior Court*,[141] the court declared that "[t]he question before us is . . . whether 'petitioner purposefully availed himself of the privilege of conducting business in California or of the benefits and protections of California laws . . . [or] anticipated that he would derive any economic benefit [here] as a result of his [act outside California] . . . .' "[142] And the *Lontos* court set forth a four-tiered analysis, the second step involving an inquiry into "whether [the defendant had] 'purposefully availed' himself of the privilege of conducting activities in California."[143]

This religious application of the *Hanson* standard to support actions stems from the state supreme court's opinion in *Kulko*. In that case, the court mandated the *Hanson* test for support suits

136. *See* International Shoe Co. v. Washington, 326 U.S. 310 (1945).
137. Kulko v. Superior Court, 436 U.S. 84, 92 (1978).
138. Titus v. Superior Court, 23 Cal. App. 3d 792, 804, 100 Cal. Rptr. 477, 487 (1972).
139. Judd v. Superior Court, 60 Cal. App. 3d 38, 45, 131 Cal. Rptr. 246, 249 (1976).
140. 357 U.S. 235 (1958). *See* text accompanying notes 18-22 *supra*.
141. 85 Cal. App. 3d 533, 149 Cal. Rptr. 569 (1978).
142. *Id.* at 535, 149 Cal. Rptr. at 570 (quoting Sibley v. Superior Court, 16 Cal. 3d 442, 447, 546 P.2d 322, 325, 128 Cal. Rptr. 34, 37 (1976)). The *Hoerler* case is discussed in detail later in this Comment. *See* text accompanying notes 184-96 *infra*.
143. *In re* Marriage of Lontos, 89 Cal. App. 3d 61, 68, 152 Cal. Rptr. 271, 275 (1979).

but found it satisfied by the defendant's acquiescence in the presence of his children in California.[144]

Significantly, the *Hanson* test arose in the context of a commercially-based cause of action against a corporate defendant.[145] Although dictum in the opinion suggests the standard is applicable to all types of cases,[146] the question naturally arises whether the "purposeful availment" test should be rigidly applied to defendants in family law suits. Special considerations of policy may make the exercise of jurisdiction desirable in these cases even when the defendant has not deliberately sought the benefit of the forum's laws.[147]

The debate over the applicability of *Hanson* is not new. Some commentators have taken the view that the "purposeful availment" test should be applied to all assertions of state court jurisdiction,[148] while others have attacked the decision itself[149] or decried a literal, wooden application of the standard.[150] This critical ambivalence has spread to the courts, with some jurisdictions rejecting the *Hanson* test in favor of the more flexible "fairness"

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144. [W]e start with the premise that a nonresident parent who allows his minor child or children to reside in California has by that act purposely availed himself of the benefits and protections of the laws of California to such an extent that absent unusual circumstances or countervailing public policies such act would support personal jurisdiction over the nonresident parent for actions concerning the support of these children.

Kulko v. Superior Court, 19 Cal. 3d 514, 522, 564 P.2d 353, 356, 138 Cal. Rptr. 586, 589 (1977), *rev'd*, 436 U.S. 84 (1978). *See also* text accompanying notes 116-21 *supra*.

145. The *Hanson* case involved a suit by the executrix of an estate against a foreign trust company. *See* text accompanying notes 18-22 *supra*.

146. *"[I]t is essential in each case* that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." Hanson v. Denckla, 357 U.S. 235, 253 (1958) (emphasis added).

147. *See* text accompanying notes 39-81 *supra*.

148. It may confidently be predicted that the facts in *Hanson v. Denckla* themselves mark the outer limits of permissible exercise of judicial jurisdiction under the due process clause, and that the exercise of jurisdiction will hereafter be sustained, in keeping with the *McGee* trend, on sets of facts only narrowly distinguishable from those in *Hanson v. Denckla*. . . .

Leflar, *Conflict of Laws*, 34 N.Y.U. L. REV. 20, 33-34 (1959).

149. *See* Hazard, *A General Theory of State Court Jurisdiction*, 1956 SUP. CT. REV. 241, 244 ("a line of analysis that in all charity and after mature reflection is impossible to follow. . . ."); Reese & Galston, *Doing an Act or Causing Consequences as Bases of Judicial Jurisdiction*, 44 IOWA L. REV. 249, 257 (1959) (arguing that the Court gave insufficient consideration to forum conveniens concepts).

150. *See, e.g.*, Woods, *Pennoyer's Demise: Personal Jurisdiction After* Shaffer *and* Kulko *and a Modest Prediction Regarding* World-Wide Volkswagen Corp. v. Woodson, 20 ARIZ. L. REV. 863 (1978). Professor Woods notes that determinations of the essential constitutional criterion of fairness, "like those of justice and beauty, should incorporate relevant considerations as they arise and not be bound by the constraints of history." *Id.* at 897-98. *See also* Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L. F. 533 (*Hanson* should be confined to its facts); *accord*, Foster, *Expanding Jurisdiction over Nonresidents*, 32 WIS. BAR BULL. 20 (Supp. Oct. 1959).

standard of *International Shoe*.[151]

The focus of much of the debate has been in the field of products liability. In *Phillips v. Anchor Hocking Glass Corp.*,[152] a products liability suit against the nonresident manufacturer of an allegedly defective dish, the Arizona Supreme Court expressly rejected the *Hanson* purposeful act requirement. Under the assumed facts, the defendant had done no business in the state and the plaintiff had purchased the defective product outside the state.[153] Accordingly, there was little question that the *Hanson* standard, if applicable, had not been met. In upholding jurisdiction anyway, the court stated: "A rule limiting jurisdiction to defendants who 'purposefully' conduct activities within the state cannot be properly applied in product liability cases in view of the fortuitous route by which products enter any particular state."[154] The *Anchor Hocking* decision has received critical approval, with one commentator arguing for "an expanded jurisdictional test emphasizing the interest of the state and the relative convenience of the parties"[155] in products liability actions.

Of course, any trend toward expanding jurisdiction in products liability cases might be attributable to the recent expansion of strict tort liability against "deep pocket" manufacturers. To the extent that sympathy factors are relevant, however, an analogy to child support suits might be appropriate. The same wide dispar-

151. For an illustrative collection of cases in products liability, contracts, and torts, see Annot., 24 A.L.R.3d 532 (1969); Annot., 23 A.L.R.3d 550 (1969); Annot., 19 A.L.R.3d 13 (1968). The *Hanson* case itself reflected the division of opinion, with the four-man minority espousing the "fundamental fairness" approach. *See* Hanson v. Denckla, 357 U.S. 235, 258-59 (1958) (Black, J., dissenting).

152. 100 Ariz. 251, 413 P.2d 732 (1966).

153. *Id.* at 253, 413 P.2d at 733.

154. *Id.* at 256, 413 P.2d at 735.

155. Comment, *Tortious Act as a Basis for Jurisdiction in Products Liability Cases*, 33 FORDHAM L. REV. 671, 685 (1965). The student commentator argued that the *Hanson* standard should not be applied in products liability cases and noted that the trend of state cases was

> to consider the reasonableness of the defendant's acts in a more general sense, including such factors as the existence of a state statute designed to provide a means of redress for its citizens, the hardship of an out-of-state trial to the plaintiff, the place and nature of the injury, and the nature of defendant's defective product.

Id. at 686. A recent Supreme Court opinion, however, has cast doubt on the validity of the *Anchor Hocking* approach. In World-Wide Volkswagen Corp. v. Woodson, 100 S. Ct. 559 (1980), the Court reaffirmed the viability of *Hanson* in a products liability suit against a nonresident automobile dealer. The full ramifications of *World-Wide Volkswagen* are not yet known, of course, but it seems clear that a blanket rejection of *Hanson* in products liability suits would be improper.

ity between plaintiff and defendant resources is present in both types of cases, suggesting a potential for heightened judicial solicitude toward both injured claimants in products liability suits and child claimants in support suits. The analogy can be strengthened by focusing on the forum state's interests. An injured plaintiff in a products liability action might well become a ward of the forum state if uncompensated. The forum thus has an interest in promoting his or her recovery.[156] Similarly, the unsupported children of delinquent parents become a drain on the welfare system of the forum, giving rise to a comparable forum interest in promoting their recovery.[157] These considerations suggest that jurisdictional issues in both types of cases merit enhanced flexibility in analysis and that the limiting *Hanson* standard may be inapposite to support suits as well as to some products liability actions.

Indeed, in spite of the sweeping language of the *Hanson* opinion,[158] it is possible that the Court never intended its "purposeful availment" standard to be applied literally in other types of cases. Historically, *Hanson* followed within a year the Court's decision in *McGee v. International Life Insurance Co.*,[159] a case in which the Court noted that "a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents."[160] The *Hanson* opinion might thus be explainable in terms of a desire by the Supreme Court to encourage interstate business by slowing the rapid expansion of state court jurisdiction before the inevitable federalism consequences became significant.[161] This rationale is absent in a noncommercial context, and suggests that the Court did not intend its "purposeful availment" language to be applied, for example, to domestic relations cases.[162]

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156. *See* Comment, *supra* note 155 at 685.

157. *See In re* Marriage of Lontos, 89 Cal. App. 3d 61, 72, 152 Cal. Rptr. 271, 278 (1979).

158. *See* note 146 *supra*.

159. 355 U.S. 220 (1957).

160. *Id.* at 222.

161. Concern for interstate federalism has been a feature of the Supreme Court's approach to long-arm jurisdiction since *International Shoe*. In that landmark case, the Court noted that the reasonableness of exercising jurisdiction over a nonresident was to be assessed "in the context of our federal system of government." International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945). *See also* World-Wide Volkswagen Corp. v. Woodson, 100 S. Ct. 559, 565 (1980):

> [W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we and remain faithful to the principles of interstate federalism embodied in the Constitution. . . . The sovereignty of each State [implies] a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.

162. Professors Arthur von Mehran and Donald Trautman have suggested that the Court rejected jurisdiction in *Hanson* simply because it disapproved of the fo-

A problem is raised, however, by *Kulko v. Superior Court*,[163] in which the United States Supreme Court for the first time dealt with a state's assertion of jurisdiction in the context of a child support suit against a nonresident parent.[164] Troubling is the Court's rather thorough discussion of the *Hanson* criteria.[165] If *Kulko* is viewed as mandating a strict application of the *Hanson* test to support suits, then any criticism of the California courts for so doing is clearly unwarranted.

But *Kulko* need not be read so broadly. In the first place, it appears that the Supreme Court's discussion of the *Hanson* standard was only designed to refute the California court's basis for asserting jurisdiction. The lower court, *without raising other indicia of reasonableness*, had premised its assertion of jurisdiction on satisfaction of the *Hanson* test, suggesting that satisfaction of the "purposeful availment" standard alone would supply a sufficient basis for jurisdiction.[166] On review, the Supreme Court found that the California court had erred in determining that the defendant father had purposefully availed himself of the benefits and protections of California's laws.[167] Since the facts did not *otherwise* justify the conclusion that the exercise of jurisdiction was fair,[168] the Court then held that California's assertion of jurisdiction was violative of due process. The Court did not reassert the *Hanson* standard as a limitation on state court jurisdiction in support actions, but simply demonstrated that the California Supreme Court's conclusion that the standard had been satisfied was incorrect.

The *Kulko* opinion might even be viewed as refining the *Hanson* language to reflect further indicia of fairness. The Court twice emphasized the applicability of its earlier opinion in *Shaffer*

rum's choice of law. A. VON MEHRAN & D. TRAUTMAN, THE LAW OF MULTISTATE PROBLEMS 1342 (1965). Acceptance of this view also compels the conclusion that the Court never intended its purposeful availment language to be applied literally in dissimilar situations.

163. 436 U.S. 84 (1978).

164. With the exception of *Kulko*, all of the Supreme Court's significant in personam jurisdiction decisions have involved corporate defendants or arm's-length transactions between individuals. *See* cases cited note 36 *supra*.

165. *See* text accompanying notes 116-21 *supra*.

166. *See* note 144 *supra*.

167. "A father who agrees, in the interests of family harmony and his children's preferences, to allow them to spend more time in California than was required under a separation agreement can hardly be said to have 'purposefully availed himself' of the 'benefits and protections' of California's laws." 436 U.S. at 94.

168. *Id.* at 97-98.

v. Heitner,[169] in which the Court had stressed the importance of a defendant's ability to foresee a potential suit in the forum.[170] It has been argued that *Kulko* thus effected an alteration in the perceived content of the *Hanson* standard to embody a concept of "fair notice" rather than literal purposefulness.[171]

This seems reasonable in light of the Court's acknowledgement that the dominant feature of due process analysis is flexibility.[172] After all, the underlying constitutional standard is one of "fair play and substantial justice,"[173] and an inelastic application of any Supreme Court language might occasionally make fairness difficult to achieve. There is certainly no explicit constitutional mandate for a "purposeful act" or "personal benefit" in the sparse text of the fourteenth amendment's due process clause. If such terms have constitutional significance, their value must lie in their flexible employment as standards by which to measure the reasonableness of exercising jurisdiction, once the defendant's contacts with the state have been enumerated and qualitatively examined. Indeed, words like "due process" and "liberty" may only have enduring vitality if they reflect contemporary perceptions of their meanings.[174] Thus, while technological and commercial realities may justify a strict application of the *Hanson* "purposeful availment" language to a suit against a corporate defendant engaged in multi-state business activities, the enhanced flexibility required in domestic relations litigation should foreclose that approach in spousal and child support suits.

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169. 433 U.S. 186 (1977).

170. This single act is surely not one that a reasonable parent would *expect* to result in the substantial financial burden and personal strain of litigating a child support suit in a forum 3,000 miles away, and we therefore see no basis on which it could be said that appellant *could reasonably have anticipated being* "haled before a [California] court," *Shaffer v. Heitner*. . . .

436 U.S. at 97-98 (emphasis added). *See also* notes 23-25 and accompanying text *supra*.

171. *See* Woods, *Pennoyer's Demise: Personal Jurisdiction After* Shaffer *and* Kulko *and a Modest Prediction Regarding* World-Wide Volkswagen Corp. v. Woodson, 20 ARIZ. L. REV. 863, 888 (1978). Other commentators have suggested that the *Hanson* "purposeful availment" language can best be explained in terms of a desire by the Court to emphasize foreseeability as an element of fairness. *See, e.g.*, Casad, *Long Arm and Convenient Forum*, 20 KAN. L. REV. 1, 11 (1971).

172. *See* text accompanying note 137 *supra*.

173. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

174. As Chief Justice Marshall noted in McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 415 (1819), the Constitution is an inherently flexible instrument, "intended to endure for ages to come, and, consequently, to be adapted to the various *crises* of human affairs." *See also* Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 387 (1821) ("a constitution is framed for ages to come, and is designed to approach immortality as nearly as human institutions can"); Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 326-27 (1816) (Constitution written in general terms to enable it to be dynamic and adapt to the future).

Unfortunately, California courts have recently felt compelled to apply *Hanson* rigidly to familial support actions.[175] This approach should be abandoned in favor of a more pliant, policy-oriented analysis, with *Hanson* interpreted to reflect desirable, but not mandatory purposefulness and foreseeability. Of course, this does not mean that the test should be discarded entirely. The "give and take" concept underlying the purposeful availment standard conforms easily to popular notions of what is fair or reasonable. Indeed, the purposefulness of the defendant's conduct should always be considered. The courts should be suspicious of the fairness of exercising jurisdiction over a nonresident in any case where he or she has not engaged in some beneficial, purposeful activity connected to the forum. But the test should not be rigidly applied.

Policy Considerations

California courts have not yet adopted a policy-oriented approach to long-arm jurisdiction in familial support suits. Explicit discussions of matters of policy have been infrequent. The opinions in *Titus v. Superior Court*[176] and *Judd v. Superior Court*[177] are exceptions. *Titus* held that visits from a nonresident parent to his child in California were insufficient contacts with the state to justify exercising personal jurisdiction over the parent for support.[178] In reaching its conclusion, the court emphasized that it was "a strong policy of [the] law to encourage the visitation of children with their parents."[179] Similarly, the *Judd* court struck down an effort to base personal jurisdiction on correspondence from an absent father to his children in California, noting that "it should be a matter of strong public policy to encourage the payment of support and communication between a natural father and his children, not to discourage the same by subjecting the father to the expense and inconvenience of relitigating this matter of support in our state."[180] More recently, some California courts

175. *See, e.g.*, Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977), *rev'd*, 436 U.S. 84 (1978); *In re* Marriage of Lontos, 89 Cal. App. 3d 61, 152 Cal. Rptr. 271 (1979); Hoerler v. Superior Court, 85 Cal. App. 3d 533, 149 Cal. Rptr. 569 (1978).
176. 23 Cal. App. 3d 792, 100 Cal. Rptr. 477 (1972).
177. 60 Cal. App. 3d 38, 131 Cal. Rptr. 246 (1976).
178. *See* text accompanying notes 89-100 *supra*.
179. 23 Cal. App. 3d at 803, 100 Cal. Rptr. at 485.
180. 60 Cal. App. 3d at 45, 131 Cal. Rptr. at 249-50.

have repeated language from the United States Supreme Court's opinion in *Kulko* to the effect that the state has substantial interests in protecting resident children and in facilitating child support actions on their behalf.[181]

Collectively, these cases evidence some degree of judicial awareness of the special considerations of policy underlying jurisdictional issues in support litigation. Nevertheless, California's current approach—marked by reliance on bases for jurisdiction developed for other types of suits and a strict application of the *Hanson* "purposeful availment" standard—fails to adequately reflect these policies. The *Hanson* standard is essentially restrictive, while the relevant policy considerations suggest that jurisdiction should be expanded.[182] Moreover, the traditional bases for jurisdiction relied on by California's courts emphasize factors which are largely irrelevant to questions of jurisdictional reasonableness in support suits.[183]

Hoerler v. Superior Court[184] provides perhaps the most striking example of the effect of California's failure to properly integrate considerations of policy into a unified jurisdictional approach. The Hoerlers were married and had children in California.[185] They lived there for fourteen years, before leaving briefly for Washington, where they were divorced.[186] Mr. Hoerler then took up residence in Washington and Mrs. Hoerler returned to California, where she brought suit.[187] In an astonishing decision, the court held that jurisdiction could not be invoked over Mr. Hoerler in California, apparently because the *Hanson* "purposeful availment" test had somehow not been satisfied.[188]

The court's only reference to policy was an unadorned quotation from the Supreme Court's opinion in *Kulko*.

> "It cannot be disputed that California has substantial interests in protecting resident children and in facilitating child-support actions on behalf of those children. But these interests simply do not make California a 'fair forum' . . . in which to require appellant, who derives no personal or commercial benefit from his child's presence in California and who lacks any other relevant contact with the State, either to defend a child-support

181. *See* Bartlett v. Superior Court, 86 Cal. App. 3d 72, 77, 150 Cal. Rptr. 25, 28 (1978); Hoerler v. Superior Court, 85 Cal. App. 3d 533, 535, 149 Cal. Rptr. 569, 570 (1978) (quoting Kulko v. Superior Court, 436 U.S. 84, 100 (1978)). *Cf. In re* Marriage of Lontos, 89 Cal. App. 3d 61, 72, 152 Cal. Rptr. 271, 278 (1979): "California has a substantial and continuing interest in the protection of its resident children and to facilitate child support actions on behalf of those children."

182. *See* text accompanying notes 39-81 *supra*.

183. *See* text accompanying notes 122-25 *supra*.

184. 85 Cal. App. 3d 533, 149 Cal. Rptr. 569 (1978).

185. *Id.* at 534, 149 Cal. Rptr. at 570.

186. *Id.*

187. *Id.*

188. *See id.* at 535, 149 Cal. Rptr. at 570.

suit or to suffer liability by default."[189]

The court did not mention the migratory American life style,[190] the special vulnerability of children,[191] or the jurisdictional significance of the intimate parent-child relationship.[192] It did not discuss the Uniform Reciprocal Enforcement of Support Act[193] or California's interest in protecting its judicial system from forum shopping.[194] It offered no rationale for its conclusion that the *Hanson* test, upon which it strongly relied,[195] had not been satisfied. Indeed, the opinion is remarkably devoid of analysis altogether. And, unless the court rested its decision on facts not given in the opinion,[196] it reached an incorrect result. The contacts Mr. Hoerler acquired with California during fourteen years of family life there should easily have supported a grant of limited jurisdiction to California's courts to try causes of action arising from the family relationship.

Hoerler demonstrates how California's failure to integrate considerations of policy into a unified jurisdictional approach for use in support suits has improperly limited the reach of the state's long-arm statute. Results like that reached in *Hoerler* could be avoided if California were to adopt a new basis for jurisdiction specifically tailored to spousal and child support suits. Application of this basis should be part of a flexible due process standard encompassing explicit policy analysis. Such an approach would reflect more adequately the full panoply of interests that are relevant to determinations of the constitutionality of exercising jurisdiction over nonresidents for support.

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189. *Id.* (quoting Kulko v. Superior Court, 436 U.S. 84, 100-01 (1978)).
190. *See* text accompanying notes 42-47 *supra*.
191. *See* text accompanying notes 48-50 *supra*.
192. *See* text accompanying notes 51-54 *supra*.
193. *See* text accompanying notes 64-76 *supra*.
194. *See* text accompanying notes 61-63 *supra*.
195. The court stated that "[t]he question before us is . . . whether 'petitioner purposefully availed himself of the privilege of conducting business in California or of the benefits and protections of California laws . . . [or] anticipated that he would derive any economic benefit [here] as a result of his [act outside California] . . . .'" 85 Cal. App. 3d at 535, 149 Cal. Rptr. at 570.
196. It is possible that factors not enumerated in the opinion contributed to the court's decision. The court did not say who had custody of the children, nor did it state how much time had elapsed between Mrs. Hoerler's return to California and the filing of the suit. If, for example, several years had passed, was the court influenced by a notion that there should be some temporal limitation on contact efficacy? The court was silent on the question, and there is nothing in the opinion to indicate which other extraneous factors (if any) may have influenced its decision.

Ideally, a basis for jurisdiction should be policy-reflective. Thus, a jurisdictional basis designed for use in domestic relations suits should provide the courts with a means of expanding jurisdiction consistent with the requirements of due process.[197] A jurisdictional basis should also afford predictability and consistency to decisions grounded upon it.

The bases for jurisdiction relied on by California courts in support litigation to date have fallen somewhat short of these goals. Neither the "doing an act in the state" basis nor the "causing an effect in the state" basis implicates the policies underlying support suits. Consequently, their use artificially limits the reach of California's long-arm statute in support litigation. California might more profitably utilize a "familial relationship" test for jurisdiction in spousal and child support suits. For example, the state might assert personal jurisdiction over a nonresident *who maintained a familial relationship with a person resident in the state at (1) the time the cause of action arose and (2) the time the suit was commenced*. Of course, jurisdiction under this test should be limited to the determination of rights and liabilities flowing from the family relationship.

This approach is premised on the presumption that a provider should be subject to the jurisdiction of the courts of his family's domicile whenever he repudiates an existing support obligation.[198] The term "familial relationship" is meant to include both the parent-child and interspousal relationships. The requirement of plaintiff residence at the time the cause of action arises is designed to ensure foreseeability of suit in the forum on the part of the defendant.[199] The requirement of plaintiff residence at the time of suit is designed to accommodate possible state interests.[200]

197. The policies underlying familial support suits suggest that, in general, expanded assertions of jurisdiction in these cases are desirable. *See* text accompanying notes 39-81 *supra*.

198. Such an approach seems altogether reasonable in light of the policies discussed in the text accompanying notes 39-81 *supra*. *See also In re* Marriage of Lontos, 89 Cal. App. 3d 61, 152 Cal. Rptr. 271 (1979), discussed in the text accompanying notes 126-35 *supra*.

199. *See* Shaffer v. Heitner, 433 U.S. 186, 216 (1977). *See also* Kulko v. Superior Court, 436 U.S. 84, 97-98 (1978); notes 23-25 and accompanying text *supra*.

200. *See* World-Wide Volkswagen Corp. v. Woodson, 100 S. Ct. 559, 564 (1980); Kulko v. Superior Court, 436 U.S. 84, 92 (1978); McGee v. International Life Ins. Co., 355 U.S. 220, 222-24 (1957); Travelers Health Ass'n v. Virginia, 339 U.S. 643, 648-49 (1950). *See also* Neil v. Ridner, 153 Ind. App. 149, 286 N.E.2d 427 (1972); Poindexter v. Willis, 23 Ohio Misc. 199, 51 Ohio Op. 2d 157, 256 N.E.2d 254 (1970); Van Wagenberg v. Van Wagenberg, 241 Md. 154, 215 A.2d 812, *cert. denied*, 385 U.S. 833 (1966); text accompanying notes 58-63 *supra*.

The utility and constitutionality of this "familial relationship" basis can be demonstrated by applying it to three hypothetical fact situations. In the first situation, Husband (*H*) and Wife (*W*) are a married couple living in California. They have two children born in the state. Following a breakdown of the marriage, *H* moves to state *X*. *W* now sues for divorce, alimony, and child support in California.

Personal jurisdiction would clearly be available under the "familial relationship" basis. *W* and the children were residents of California both at the time the cause of action for support arose (upon *H*'s desertion of his family) and at the time of filing suit. The obligation of support is one flowing from the family relationship.

Constitutionally, there can be little doubt that *H*'s contacts with California are sufficient to satisfy the fundamental fairness standard of *International Shoe*.[201] The aggregate of contacts which would normally be acquired while California was the marital domicile should easily support a limited jurisdiction to determine any rights and liabilities arising from the marital relation. Additionally, *H* would have had reason to foresee a suit in California since California was the situs of the family relationship and *W* and the children had remained there. The foreseeability language of *Shaffer* would therefore be satisfied.[202]

Moreover, California's strong interest in providing a means of redress for its residents would be accommodated by exercising jurisdiction over *H*. Even the *Hanson* "purposeful availment" test would be satisfied, by virtue of *H*'s initial establishment of California as the marital domicile, thus nurturing his family relationship under California laws.[203]

That was an example of a situation in which jurisdiction obviously would lie under the "familial relationship" basis. The following hypothetical presents a situation in which jurisdiction just as obviously would not lie. Suppose *H* and *W* are a married couple living in state *X*. They have two children born in that state. When the marriage breaks down, they obtain a divorce in state *X*, the decree providing that *W* is to have custody and *H* is

201. *See* text accompanying notes 11-13 *supra*.

202. *See* notes 23-25 and accompanying text *supra*. Indeed, it is difficult to conceive of a situation in which suit in a foreign state would be more foreseeable.

203. This is not to say, of course, that the *Hanson* test must be satisfied. *See* text accompanying notes 136-75 *supra*.

to pay child support and alimony. *W* and the children then move to California. Thereafter, *H* makes payments as required by the *X* decree. He has no other contacts with California. Subsequently, *W* sues in California to domesticate the *X* judgment and to increase *H*'s support obligation.[204]

Personal jurisdiction over *H* would not lie under the proposed "familial relationship" basis. Although *W* and the children were California residents at the time suit was brought, they were not California residents when the cause of action for support arose (upon divorce in state *X*).

Again, this result is constitutionally proper. It would be exceedingly difficult to reconcile jurisdiction over *H* in this situation with the "fair play and substantial justice" standard of *International Shoe*.[205] *H*'s only contacts with California (the presence of his ex-wife and children and the mailing of support payments to them) were involuntary. *W* had unilaterally taken the children with her to California, and *H* was obligated by law to send regular support payments to them. Moreover, *H* had no reason to foresee a potential suit in California. And the potential for forum shopping by *W* is obvious.[206] Even the state's interest in the welfare of its residents takes on a diminished importance under these facts, since *W* and the children had not been abandoned or left destitute. *H* was making his regular support payments as ordered.

That was another straightforward situation. The following hypothetical presents a much closer question. Suppose *H* and *W* are once again a married couple living in state *X*. They have two children born in the state. Again, they obtain a divorce in state *X*, the decree providing that *W* is to have custody of the children and *H* is to pay child support and alimony. *W* and the children then move to California. Thereafter, *H* defaults on his payments and *W* brings suit in California.

This time, the "familial relationship" test would provide a basis for jurisdiction to determine child support, but not to determine alimony. Both *W* and the children were residents of California at the time the cause of action arose (when *H* defaulted) and at the time the suit was commenced. *H*, however, only had a familial relationship with the children at those times. The interspousal

204. This fact situation is similar to that presented to the California Supreme Court in Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977), *rev'd*, 436 U.S. 84 (1978). *See* text accompanying notes 107-21 *supra*.

205. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). *See also* Milliken v. Meyer, 311 U.S. 457, 463 (1940).

206. Compare this fact situation with that presented in Henderson v. Henderson, 77 Cal. App. 3d 583, 142 Cal. Rptr. 478 (1978), discussed in note 63 *supra*.

bond was terminated by the divorce. Thus, the requirements of the "familial relationship" basis would be satisfied for the children but not for *W*, and jurisdiction would only lie to determine child support.

Although this example presents a much closer question than either of the first two hypotheticals, the results obtained using the "familial relationship" basis are once again consistent with the demands of due process. *H* gave rise to the cause of action for support by his own purposeful conduct. His decision to stop sending payments was made with knowledge of the consequences that would result in California. Thus, he could not successfully argue that suit there was unforeseeable. Moreover, forum shopping by *W* is not a factor because she chose California as her home *before H* repudiated his support obligations.[207] Accordingly, given the disparity in resources and mobility between *H* and the children and the special significance of the parent-child relation,[208] it seems clear that *in an action for child support*, the due process test of reasonableness would be met. Indeed, on broader policy grounds, it is difficult to justify a contrary result. Not allowing suit in California under these circumstances would encourage supporting parents to default on their payments, secure in the knowledge that the cost and inconvenience to their dependents of bringing suit in a foreign state would insulate them from liability.

A different result should obtain with respect to *spousal* support, however. An alimony suit is very much like any other action in which the plaintiff seeks a money judgment. Because *W* stands to gain by the suit, the pro-defendant due process bias should be operative.[209] Additionally, unlike the children, *W* is not helpless. And there is no longer any special intimacy between the parties to lend greater significance to *H*'s contact with California. Thus, exercising jurisdiction over *H* in an alimony suit would be unreasonable.[210] The results reached using the "familial relationship" basis again coincide with those mandated by the Constitution.

207. A plaintiff's choice of residence before the cause of action arises cannot reasonably be construed as an attempt to forum shop. The search for a favorable court does not normally commence until suit is imminent.

208. *See* text accompanying notes 48-57 *supra*.

209. *See* note 48 and accompanying text *supra*.

210. *See, e.g.*, text accompanying note 77 *supra*. *But see* text accompanying notes 78-81 *supra*.

It is worth noting that the "familial relationship" basis expands jurisdiction, at least in child support suits. Jurisdiction to determine child support in the last example would be difficult to obtain under the current California approach. First, the court would have to strain to fit the facts of the case into one of the presently recognized bases for jurisdiction. It might be argued, for example, that *H* had "caused an effect" in California by failing to make his support payments. The use of the "causing an effect in the state" basis in support actions, however, was expressly disapproved by the Supreme Court in *Kulko* as designed to meet the needs of other types of cases and consequently inapposite to domestic relations litigation.[211] Moreover, even if the court were successful in molding the jurisdictional facts to fit some other basis for jurisdiction, the current California approach would mandate dismissal of the suit because the *Hanson* "purposeful availment" test would remain unsatisfied.[212] While *H*'s conduct in cutting off support to his family was purposeful, he did not thereby avail himself of the benefits and protection of California laws. Thus, because California applies the *Hanson* standard in a rigid fashion to alimony and child support suits, jurisdiction would fail. In contrast, if California were to apply *Hanson* flexibly, as suggested herein,[213] jurisdiction would be upheld.

The "familial relationship" basis for jurisdiction outlined here is presented as a sample of the kind of test that should be adopted by California's courts; no claim is made that this particular test must be adopted. The "familial relationship" basis is only a model. Further thinking could no doubt improve upon it or perhaps produce a different, more appropriate standard. The important point is that California should develop a policy-reflective approach keyed to the family relationship which will expand jurisdiction in support suits without violating due process.

CONCLUSION

In assessing the constitutionality of asserting jurisdiction over nonresident defendants in support actions, California's courts have given inadequate attention to the special considerations of policy that attach to intrafamily lawsuits. They have relied, instead, on bases for jurisdiction derived from tort or contract actions between unrelated individuals,[214] supplementing their

211. Kulko v. Superior Court, 436 U.S. 84, 96 (1978). *See* text accompanying notes 124-25 *supra*.

212. *See* text accompanying notes 140-44 *supra*.

213. *See* text accompanying notes 145-75 *supra*.

214. *See* Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977), *rev'd*, 436 U.S. 84 (1978) ("causing an effect in the state" basis); *In re* Mar-

analyses with literal applications of the *Hanson* "purposeful availment" standard.[215] Consequently, California's courts have failed to fully exploit the broad mandate given to them by section 410.10 of the Code of Civil Procedure.[216]

This conservative approach should be abandoned in favor of a more flexible, policy-based method of analysis. California's courts should adopt a basis for jurisdiction tailored to the dominant feature of support suits—the family relationship. Whether the courts adopt the test proposed by this Comment or another one like it is unimportant. What is important is that the courts adopt an approach which implements the policies underlying support actions and expands the scope of personal jurisdiction without running afoul of *International Shoe* and its progeny. The use of any "familial relationship" basis should do this, while affording enhanced consistency and predictability to jurisdictional decision-making in this area of the law. California's consequent abandonment of doctrines derived from functionally dissimilar cases would be a first important step toward principled analyses of jurisdictional questions in spousal and child support suits.

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riage of Lontos, 89 Cal. App. 3d 61, 152 Cal. Rptr. 271 (1979) ("causing an effect in the state" basis); Judd v. Superior Court, 60 Cal. App. 3d 38, 131 Cal. Rptr. 246 (1976) ("doing an act in the state" and "causing an effect in the state" bases); Titus v. Superior Court, 23 Cal. App. 3d 792, 100 Cal. Rptr. 477 (1972) ("doing an act in the state" and "causing an effect in the state" bases). *But cf.* Bartlett v. Superior Court, 86 Cal. App. 3d 72, 150 Cal. Rptr. 25 (1978) ("causing an effect in the state" basis not applicable to domestic relations suits). *See generally* text accompanying notes 83-135 *supra*.

215. *See* Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977), *rev'd*, 436 U.S. 84 (1978); *In re* Marriage of Lontos, 89 Cal. App. 3d 61, 152 Cal. Rptr. 271 (1979); Hoerler v. Superior Court, 85 Cal. App. 3d 533, 149 Cal. Rptr. 569 (1978).

216. *See* Hoerler v. Superior Court, 85 Cal. App. 3d 533, 149 Cal. Rptr. 569 (1978); text accompanying notes 184-96 *supra*.